

# COVINGTON & BURLING LLP

1201 PENNSYLVANIA AVENUE NW  
WASHINGTON, DC 20004-2401  
TEL 202.662.6000  
FAX 202.662.6291  
WWW.COV.COM

BEIJING  
BRUSSELS  
LONDON  
NEW YORK  
SAN DIEGO  
SAN FRANCISCO  
SILICON VALLEY  
WASHINGTON

April 19, 2012

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**Re: Notice of Ex Parte Communication**  
**MM Docket No. 00-168; MM Docket No. 00-44**

Dear Ms. Dortch:

On Tuesday, April 17, I met with Holly Saurer of the Media Bureau, at the request of Bill Lake, Chief of the Media Bureau. The meeting was a follow-up to the ex parte submission in this proceeding made on February 15, 2012, on behalf of Barrington Broadcasting Co., Belo Corp, Cox Media Group, Dispatch Broadcast Group, The E.W. Scripps Company, Gannett Broadcasting, Hearst Television, Meredith Broadcasting Group, Post-Newsweek Stations, Raycom Media, and Schurz Communications (the “Station Groups”). The meeting with Ms. Saurer also was a follow-up to the meeting that Dunia Shive, President and Chief Executive Officer of Belo Corp., and I had held with Chairman Genachowski and his Legal Advisor, Sherrese Smith, on Sunday, April 15.

My meeting with Ms. Saurer was confined to the proposed online political file aspects of the public file proposal in the above-referenced proceeding, and did not discuss the public file proposal more generally. I began the meeting by pointing out that with the FCC’s Sunshine Notice for the FCC’s April 27 open meeting to discuss the online political proceeding about to be released, realistically we have only a few days to develop a win-win resolution of the political file issues involved in this proceeding. I suggested that the Station Groups’ proposal to place on the FCC’s website an aggregated dollar figure for the dollars spent by each candidate or other purchaser of political time was just such a win-win solution and would better serve the goals of the Commission and of various non-broadcaster groups than would disclosure of spot-by-spot purchase prices, as proposed in the Notice of Proposed Rulemaking in this proceeding.

- First, the information that the Station Groups have proffered as an alternative to the spot-by-spot pricing information surely would be more useful to journalists, scholars and those interested in the policy implications of political spending, to the extent that this is a legitimate consideration under the statute.

- Second, candidates and political buyers interested in assuring that they are receiving the lowest unit rates already are effectively protected by their access to spot-by-spot political rate information in stations’ local public files. There is no pattern of candidates being charged rates that exceed the lowest unit rate and no record of widespread candidate complaints. Moreover, the Station Groups’ proposal would retain the present public file requirements for political ad purchasers, and would not affect the disclosure obligations set forth in 47 C.F.R. Section 73.1972, which candidates currently can and do use to make sure that broadcasters are charging them appropriate rates.
- Third, the disclosure of lowest unit rate information (and comparable rates, outside of the 45- and 60-day windows preceding primaries and general elections) on the FCC’s website immediately and worldwide, as proposed by the FCC in this proceeding, would distort the marketplace and have anticompetitive consequences. The disclosure requirements proposed in this proceeding would not apply to television stations’ other media competitors like cable, satellite, the Internet and print media. As a consequence, the proposal could motivate political buyers to shift substantial sums away from over-the-air television to these other media. Such potentially severe marketplace disruption is contrary to the public interest. Also, the proposal would require anticompetitive disclosure of rates to marketplace competitors for local advertising, such as cable systems, satellite systems, websites, newspapers, and other local stations. Because political lowest unit rates are by definition based on rates charged to commercial advertisers, the online political file requirement would also have substantial adverse competitive impact in the commercial advertising market. Just as the FCC has found that privacy concerns warrant treating correspondence from the public differently from the rest of the public file, it should find that these competition concerns warrant treating rate information differently from the rest of the political file. The Station Groups’ proposal to place aggregated spending figures online would ameliorate these concerns.

Given that there is no demonstrated need for the additional online requirements proposed in this proceeding and given the substantial harms and risks on the other side of the scales, if the Commission proceeds with the online public file proposal, it would be preferable for it to adopt the proposal on this one point submitted by the Station Groups on February 15, instead of the proposal contained in its NPRM.

In defense of the FCC’s proposal, the argument is made that stations already have to disclose their lowest unit rates by placing this information in their local public files, so that there would be no additional harm by their having to upload this information onto the FCC’s website. But, making the information available on the Internet will result in far wider dissemination and will multiply its anticompetitive and disruptive market effects. The FCC’s NPRM in this proceeding explicitly acknowledged this fact. Thus, with respect to letters and emails from the public, the Commission noted that “making this information available online

would make it much more readily accessible to the public,” implicating burdens and privacy issues not raised by placing such materials in stations’ hardcopy files.<sup>1</sup>

In our meeting, I mentioned to Ms. Saurer that we have even been told by Commission representatives in the past that they believe the FCC could not, as proposed by the Station Groups, require certain of the political information currently included in stations’ local public files to be placed online, but not other categories of information (spot-by-spot rate information). But, in fact, no provision in the Act raises such an impediment. The Act and the Commission’s rules require disclosure of political ad prices, but does not require that the disclosure be online -- which is the precise issue at stake here.<sup>2</sup> In fact, that line of reasoning turns logic on its head. It is just as reasonable (and, in fact, more so, in light of the language in the statute that makes no mention of onsite posting) for the Commission to determine what data should be included in its online posting requirement, not which should be excluded from its proposed online filing requirement.<sup>3</sup>

Moreover, the FCC has already proposed to exempt correspondence from the public from the proposed online posting requirement. That the FCC made this exception rebuts the argument that the FCC cannot, as a legal matter, make an exception for political rate information. In fact, in 2007, the FCC followed this approach, exempting the political file from its order requiring television stations to place their public files online. No showing has been made to justify this reversal in course.

In addition, I pointed out that the Station Groups had stated to the Media Bureau that they would consider, as the Media Bureau had requested, extending the online filing requirements to non-candidate political spots, provided that these new requirements would not involve rate disclosures, and would do so even though this offer goes considerably beyond the scope of the requirements presently proposed by the Commission in the NPRM.

In short, the Station Groups contend that their proposal for the political files better serves the public interest than do the proposals in the FCC’s NPRM.

\* \* \*

---

<sup>1</sup> *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Order on Reconsideration and Further Notice of Proposed Rulemaking, 26 FCC Rcd 15788, para. 26 (Oct. 2011).

<sup>2</sup> For example, we believe the FCC could conclude that for the reasons cited here that the FCC could retain the paper file requirement for the political file or parts of it and impose the online filing requirement for other aspects of the political and public file requirements.

<sup>3</sup> Indeed, the FCC may well lack authority to require online disclosure of the political file. In the Bipartisan Campaign Reform Act of 2002 (also known as the McCain-Feingold Act), Congress required that certain election-related records be made available for public inspection *and* online, but did not extend this requirement to records that broadcasters are required to maintain under that law. See Supplemental Comments of the National Association of Broadcasters in the above referenced dockets (March 8, 2012).

Ms. Saurer asked about whether the Stations Groups would consider (unspecified) changes to their February 15 proposals. I referred to our March 15 ex parte notice, which contained the Stations Groups' responses to the Media Bureau's nine suggestions for expanding or otherwise fleshing out the Station Groups' February 15 proposals. I said that I believed that the Groups would be willing to discuss and consider further compromises with the Bureau, but we needed to do so promptly, given the April 27 open meeting date for the Commission's meeting on this topic.

The Media Bureau had asked the Station Groups to assess the sentiment of other broadcast groups about accepting a proposal along the lines spelled out in the February 15 letter. Our assessment, as reported in our March 13 meeting with the Media Bureau, was that there was substantial willingness to do this. We believe that this continues to be the case although we cannot speak for other broadcast companies.

Respectfully submitted,

/s/

Jonathan D. Blake

cc: Holly Saurer  
Mary Jo Manning  
Wade Hargrove